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31 May 1968

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MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: DCI's Responsibility for Protection of Intelligence Sources and Methods

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1. This memorandum is for information.

2. The third proviso of section 102(d)(3) of the National Security Act of 1947, as amended, provides "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." This language derived from the Presidential Directive of 22 January 1946 which established CIG and which provided in section 10, "In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods."

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3. The history of section 10 turns primarily on the opposition of the military intelligence services to central coordination of intelligence activities by a civilian agency and in particular to section 5 of the Presidential Directive, which reads, "Such intelligence received by the intelligence agencies of your departments as may be designated by the National Intelligence Authority shall be freely available to the Director of Central Intelligence for correlation, evaluation or dissemination. To the extent approved by the National Intelligence Authority, the operations of said intelligence agencies shall be open to inspection by the Director of Central Intelligence in connection with planning functions." They were much concerned that their clandestine activities and sensitive sources would be compromised if revealed to what they considered an organization not experienced in security matters. They thereupon proposed the wording of section 10 for the purpose of assuring that the Director of Central Intelligence would have a responsibility for

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protecting their intelligence sources and methods. Initially, therefore, the responsibility was a limited one and would have been properly construed to mean that the Director must institute such security standards and procedures as would adequately protect the information coming from the other agencies. This he would be clearly authorized to do.

4. At the time the National Security Act was being considered numerous drafts were prepared, all of which contained some language on the responsibility to protect sources and methods. But, the concept was still limited, as for instance in the draft of 9 April 1947 of which section 3(6) read, "be responsible for taking measures to protect sources and methods used in the collection and dissemination of foreign intelligence information received by the Agency." The legal problems involved in any such statement of responsibility were recognized in a memorandum of 13 February 1947 which suggested changing the words to some such phrase as "be responsible for taking measures to protect" sources and methods. Further, in recognition of the legal problems, we proposed legislation designed to give additional protection to classified information, but these proposals were discarded during the consideration of the legislation.

5. During the 79th Congress the House Committee on Military Affairs issued a report which recognized the need for strong national intelligence and made a number of specific recommendations, among which was one that certain of the sections, including section 10, of the Presidential Directive of 22 January 1946 be enacted into law. There is no indication that they knew the background of section 10, and as the legislation progressed it was rephrased until it came out as the third proviso to section 102(d)(3) quoted above. There is little or no legislative history on this point except that members of the committees thought that such a responsibility was a good idea. Of course, they also put in the first proviso to section 102(d)(3) (which derived from section 4 of the Presidential Directive), "That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions." Literally construed, this would mean the Director could take no action to carry out the responsibilities placed on him in the third proviso. The first proviso, however, has been construed so as not to prohibit the Agency from taking necessary action in connection with the security of its internal information and its own personnel.

*(New Series)
Revised 15 Sept. 1958
Supersedes NSCID No. 1-21
12-5
15 Sept 1958
as when
of Board
John Ford*

6. Furthermore, the Director has responsibility under NSCID No. 1, paragraph 5, which reads as follows:

The Director of Central Intelligence, with the assistance and support of the members of the U. S. Intelligence Board, shall ensure the development of policies and procedures for the protection of intelligence and of intelligence sources and methods from unauthorized disclosure. Each department and agency, however, shall remain responsible for the protection of intelligence and of intelligence sources and methods within its own organization. Each shall also establish appropriate internal policies and procedures to prevent the unauthorized disclosure from within that agency of intelligence information or activity. The Director of Central Intelligence shall call upon the departments and agencies, as appropriate, to investigate within their department or agency any unauthorized disclosure of intelligence or of intelligence sources or methods. A report of these investigations, including corrective measures taken or recommended within the departments and agencies involved, shall be transmitted to the Director of Central Intelligence for review and such further action as may be appropriate, including reports to the National Security Council or the President.

7. Practically, the Director does have some power to carry out a limited portion of his responsibility for the protection of intelligence sources and methods. In addition to establishing standards for security control, he can, in theory at least, limit dissemination and in connection with the courts and the Congress claim executive privilege. In practice, the authority is not Draconian in nature as is illustrated by the problems in limiting dissemination of NIEs to foreign countries. As another example, at one time Mr. McCone was going to insist that all NSA personnel be polygraphed and found that he could not impose this condition universally on military

assignments to NSA. He was ^{also, however,} to require that all military personnel detailed to NPIC be polygraphed as NPIC comes under Agency controls. While there is, therefore, some power to carry out the responsibility as originally conceived in section 10 of the Presidential Directive, there is little or no authority to carry out the responsibility which normal interpretation of the statutory wording would imply.

8. Time and again over the years information compromising important and sensitive intelligence sources and methods has been revealed in the press or elsewhere. The Director can and has ordered thorough investigations to be made, but these are normally futile, and so far efforts to force correspondents to reveal their sources have been unsuccessful. Even if the source is discovered, as a practical matter there is little or nothing that can be done about it. A handful of individual cases which fitted particular criminal statutes, like the Petersen and Scarbeck cases, have been prosecuted successfully. In most cases if the source of the leak is discovered, there is either insufficient evidence on which to prosecute or the evidence which would be needed for successful prosecution would in itself reveal sensitive intelligence sources and methods.

9. The Director's statutory responsibility for protecting intelligence sources and methods as worded and as generally construed is, therefore, without any realistic authority for its enforcement unless it is limited in concept to the original aim of intelligence standards and procedures within the intelligence community for protection of the community's information on its sources and methods.

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